

UNIT-II

JAMMU & KASHMIR LIMITATION ACT:

The Jammu & Kashmir Limitation Act, was passed in 1938. At present, the Jammu & Kashmir Limitation Act, 1995 is in operation.

Significance and object of Law of Limitation:

The object of the limitation Act is to restraint the claimants who opt to invoke their rights belatedly and do not seek justice in time. Unlimited and perpetual litigation disturbs the peace of society and leads to disorder and confusion. A constant dread of judicial process and a feeling of insecurity retard the growth and prosperity of a nation. The law of limitation prescribes this limit. The Romans, therefore, had the maxim "***interest republicae ut sit fines litum***" (the interest of the state requires that a period should be put to litigation). The law of limitation prevents persons from enforcing their own rights, and disputing the rights of others, after a certain period of time, and thus quits titles and enhances the value of property. It enables men to reckon upon security from further claim and to act upon it. The necessity for putting a limit to litigation arises also from the perishable nature of man and all that belongs to him.

The limitation Act lays down definite rules of law, giving to the people for whose benefit they have been framed a guarantee that after a lapse of certain period they may rest in peace and rely upon titles or other rights which they have acquired. Law of limitation enjoins alertness upon the citizen by making a citizen who delays too long to lose his right altogether. The law assists the vigilant and not those who sleep over their rights -"***Vigilantibus non dermentibus jura subvenient***".

The law of limitation only bars the remedy of a person by means of a suit, it does not deprive him of his right if it can be exercised in any other manner than by means of a suit. Thus, where a suit or debt is barred by

limitation, the debt nevertheless remains; it is open to the debtor to pay the barred debt and the payment cannot be recalled on the ground of failure of consideration.

Section 28 of the J&K Limitation Act, creates an exception to the aforesaid principle. It provides that at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Law of Limitation is statute of repose, peace and justice:

Law of limitation can well be described as statute of repose because it extinguishes disputes and settles rival claims within limited period. It secures peace as it ensures security of rights, and it secures justice, as by lapse of time, evidence in support of rights may have been destroyed. Of late years the desire has been general, both on the part of the legal profession and on the part of the public, to abridge the length of the time during which actions may be commenced, and there can be little (if any) doubt that the policy of the statutes of limitation is good, and is one to be encouraged. They are such legislative enactments as prescribed by the periods within which actions may be brought upon certain claims, or within which certain rights may be enforced.

The law of limitation is founded on public policy, its aim being to secure quiet of the community, to suppress fraud and perjury, to quicken diligence and prevent oppression.

Definitions (section 2)

In the Act the definitions have been given under section 2 which inter alia state as under:

(1) "applicant" includes any person from or through whom an applicant derives his right to apply;

(2) "bill of exchange" includes a hundi, brat and a cheque;

(3) "**bond**" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(4) "**defendant**" includes any person from or through whom a defendant derives his liability to be sued;

(5) **Omitted;**

(6) "**foreign country**" means any country other than India;

(7) "**good faith**" nothing shall be deemed to be done in good faith which is not done with due care and attention;

(8) "**plaintiff**" includes any person from or through whom a plaintiff derives his right to sue;

(9) "**promissory note**" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight;

(10) "**suit**" does not include an appeal or an application;

(11) "**trustee**" does not include a benamindar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrongdoer in the possession without title.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS:

Section 3:

Dismissal of suits, etc., instituted, etc., after period of limitation (Bar of Limitation):

Subject to the provisions contained in sections 4 to 25 (4 to 24 in Central Act) (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation: A suit is instituted, in an ordinary case, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator.

What Section 3 of the limitation Act says is that every suit instituted after the prescribed period shall be dismissed, although limitation has not been set up as a defence. The court has not only the power but also the duty to consider as to whether a matter is time barred and from Section 3(1) of the limitation Act it is clear that it is the duty of the court to decide whether the proceedings instituted before it was barred by time, even if plea of limitation is not taken by the opposite party.

In ***Ashok K. Khurana v. M/s. Steelman Industries & Others, AIR 2000 Delhi 336***, it was observed that: *"Mere reading of Section 3 of the Act shows that it is mandatory and absolute in nature. It enjoins upon the court to dismiss any suit instituted, appeal preferred or application made after the prescribed period of limitation, although limitation has not been set up as a defence. Courts have no discretion or inherent powers to condone the delay if the suit is filed beyond the prescribed period of limitation, rather a duty is cast on the court to dismiss the suit, appeal or application if the same is barred by limitation unless matter is covered by Section 4 to 24 of the Act"*

So it becomes clear that provisions of Section 3 of the Act are mandatory in nature. Section 3 enjoins a court to dismiss every suit, appeal or application which is not within the prescribed period. Gateways from the peremptory provisions of Section 3 are provided by Sections 4 to 24 (4 to 25 in J&K Limitation Act). In other words, the court has no power, apart from the provisions of sections 4 to 24 (4 to 25), to relieve a litigant from the bar of limitation even on equitable consideration or on ground of hardship or in exercise of its inherent powers.

In ***Punjab National Bank v. Surender Prasad Sinha, AIR 1992 S.C 1815***, it was observed that "Section 3 of the limitation Act only bars the remedy but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Therefore, when the principal debtor did not repay the bank loan, the bank as creditor can adjust it at maturity of the fixed deposit receipts deposited by the guarantor with the bank as security, though the debt becomes barred by limitation at the time of maturity of the said fixed deposit receipts. It is not obligatory to file a suit to recover the debt. Such adjustment would not amount to offence punishable under Sections 109, 114 and 409 of the Indian Penal Code".

Section: 4

Where court is closed when period expires:

Where the period of limitation prescribed for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the date when the court reopens.

This section enables a party to a legal proceeding to initiate the same on the next day if the previous day happened to be the last day and on that day the court remained closed for any part of the day. The language of the section indicates that it does not extend the period prescribed for the presentation of any suit or appeal or application but that it only provides that where the period prescribed expires on a particular day when the court is closed, notwithstanding that fact the application may be made on the day the court reopens. Thus, Section 4 of the Limitation Act does not extend the period of limitation. It provide for the contingency when the prescribed period expires on a holiday and the only contingency contemplated is "when the court is closed". The expression "when the court is closed" refers to the court in which the revision ought to have been made – **Maqbool Ahmed v. Onkar Pratap, AIR 1935 P.C 85**.

Section: 5.

Extension of prescribed period in certain cases

Any appeal or any application, for a review of a judgment or for leave to appeal or an application to set aside an order of dismissal of a suit for plaintiff's default or an application to set aside a decree passed ex-parte in an original suit or appeal or an application to bring the heirs of a deceased party on the record or an application to set aside an order of abatement of a suit or appeal or any other application to which this section may be made applicable by or under an enactment for the time being in force may be, admitted after the period of limitation prescribed therefor, when the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation: The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

Section 5 is an exception to the general rule provided in section 3 and section 5 provides that in certain proceedings upon showing "Sufficient Cause" court may condone delay in approaching it. By reading Section 5 it is clear that the provisions contained in it applies only to:

- i. appeals; and
- ii. any applications other than applications under any provisions of Order 21, Criminal Procedure Code.

So section 5 has no application on the suits. The reason is that period prescribed for applications and appeals mentioned in this section does not exceed six months while for suit it extends from 3 to 12 years. In **Union of India v. Abdul Ahad Kuttoo, 2013 JKJ 447 (J&K)**, it was held that where the counsel who was representing the applicant/appellant earlier

had not properly advised them, which resulted in delay in filing of the appeal. The appeal filed by the respondents in respect of the impugned argument is pending on the files of this court. The delay in filing the appeal in these circumstances is neither intentional nor deliberate. Public interest is involved; the appeal would require to be decided on its merits.

In ***Union of India v. Jaswant Raj Kotwal, 2004 (1) JKJ 593 (J&K)***, it was held that before granting condonation of delay, it is imperative for the court to record satisfaction that explanation tendered by the applicants for the delay in filing the appeal is reasonable and satisfactory, which is essential prerequisite to the condonation of delay. The discretion to be exercised by the court has to be either proper or judicious in condoning the delay.

In order to get the benefit of this section, the courts must be satisfied with the sufficient causes for not performing the appeal or application. The term "sufficient cause" used here has not been defined in this Act. Its meaning, therefore, can be accepted as a cause which is beyond the control of the party invoking the aid of this Section. This term "sufficient cause" must, of course, be given a liberal meaning so as to advance substantial justice when any negligence or inaction or want of bona fide is not imputable to the appellant – ***New India Insurance Co. Ltd v. Smt. Shanti Misra, AIR 1976 SC 237***. The sufficient cause can be determined from the facts and circumstances of a particular case – ***Shakuntala Devi Jain v. Kuntal Kumari, AIR 1969 SC 575***. The power given to the courts under Section 5 is discretionary yet it has to be exercised in a judicial manner keeping in view the special circumstances of each case.

In ***Brij Inder Singh v. Kanshi Ram, AIR 1917 PC 156***, it was observed that true guide for a court to exercise the discretion under the section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal.

In **General Fire and Life Assurance Corporation Ltd v. Janmahomed Abdul Rahim, AIR PC 6**, relied upon the writings of Mr Mitra in Tagore Law Lectures, 1932 wherein it has been said that "a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law".

In **Smt. Prabha v. Ram Prakash Kalra, AIR 1987 SCC 339**, the Supreme Court took the view that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. In **Vedabai Alias Vijayanatabai Baburao Patil v. Shantaram Baburao Patil, AIR 2001 SC 2582**, the Apex Court made a distinction in delay and inordinate delay observing as "*In exercising discretion under section 5 of the limitation Act, the court should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the otherwise will be a relevant factor so the case calls for a more cautious approach*".

In **P.K. Ramachandran v. State of Kerala, AIR 1998 SC 2276**, the Apex Court held that, "*Law of Limitation harshly affects a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation as equitable grounds. The discretion exercised by the High Court, thus, neither proper nor judicious. The order condoning the delay cannot be sustained*".

In **O.P. Kathpalia v. Lakhmir Singh, AIR 1984 SC 1744**, the Supreme Court held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

The following are some examples of what is and what is not sufficient cause:-

- (a) Illness:** Illness is considered as sufficient cause to get benefit of section 5, but mere plea of illness is not sufficient cause for not filing proceeding in time unless it is shown that the appellant or applicant was utterly disabled to attend to any duty.
- (b) Imprisonment:** A person can be given the benefit of section 5 if he is undergoing imprisonment due to some criminal act. The time spent by him in the jail may be deducted from the prescribed period of time.
- (c) Mistaken legal advice:** A mistaken legal advice given by a legal practitioner may in circumstances of a particular case give rise to sufficient cause within the meaning of section 5.
- (d) Illiteracy:** The fact that appellant was illiterate is not sufficient reason to condone the delay.
- (e) Delay in obtaining copies:** When a delay is caused-
 - (i) obtaining a copy of the order or decree of a court and such delay was caused by the officer of the court;
 - (ii) by the court itself in issuing order;
 - (iii) due to the method wrongly adopted in procuring the copy of the decree or order of the court.

Illustrative cases where delay condoned:

- 1.** Illness of a party for which he was advised bed rest. Party suffering from T.B – ***Bhakhu Bahi v. State, AIR 1989 Guj 8.***
- 2.** Applicant suffering from mental shock because of son's death and also because of wife's illness.

3. Applicants were old people and minor girl and were unable to contact their council regularly for knowing the suits progress.
4. Applicants are pardanashin ladies and are ignorant of law, delay in filing application for setting aside abatement even though ordinary ignorance of law is no excuse – ***R. Devi v. S.S. Chand, AIR 1986 SC 67.***
5. Applicant acting on the mistaken advice of his counsel was reasonably led into the mistaken belief that the valuation of suit was such that an appeal lay to the High Court and not to the District court. This is so even though the mistaken advice given by the lawyer was careless or negligent and the lawyer did not act in good faith provided the appellant acted with due care and attention.
6. Delay was caused due to wrong statement of law in government publication – ***Kesharibai v. Kanhayal AIR 1974 Raj 63.***
7. A bona fide miscalculation of the period of limitation by the counsel.
8. Where copies had already been given to the lawyer in time but they were misled and were found out after 5 days search and the appellant who was businessman returned from outstation only on the last day of limitation and there was delay of 6 days in filing appeal.
9. Where there was delay of one day in filing the appeal on account of appellants son and grandson in false and frivolous case requiring attendance (of appellant) in the other court – ***Nand Singh v. Estate Officer, AIR 1993 Del 38.***

Illustrative cases where delay not condoned:

1. Delay due to routine and leisurely inter-departmental consultations of the appellant Insurance Company – ***National Insurance Company v. Monoranjan, AIR 1986 Ori 212.***

2. Delay caused because the petitioner had to collect money from amongst a large number of petitioners who were interested in the case.
3. Where a party contended that he remained "engrossed in his marriage" and did not take steps to obtain the copies or to present the appeal – ***Rupewas Saikia v. Aniram Saikia, AIR 1980 Gau 60.***

Section: 6

Legal disability

(1) Where a person entitled to institute a suit or make an application for the execution of a decree, is at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the times so specified.

(3) Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

(4) Where the legal representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

In ***Akther Hussain v. Qudrat Ali, AIR 1923 Oudh 31***, it was observed

that section 6 of the limitation Act has no application in case of appeals. Legal disability is inability to sue owing to minority, lunacy or idiocy. The effect of legal disability is that it extends the period of limitation but it does not prevent the period from running.

Illustrations:

- (a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accrue. He may institute his suit at any time within 3 years from the date of his attaining majority.
- (b) A right to sue accrues to X during his minority. After the accrue, but while X is still a minor, he becomes insane. Time runs against X from the date when his insanity and minority ceases.
- (c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

Section: 7

Disability of one of several plaintiffs or applicants

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations:

- (a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge of the debt

without the concurrence of B and C. Time runs against B, C and D.

- (b)** A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

In ***Sushila Dar v. Prem Kumar, AIR 1981 All 83***, it was held that section 7 of the limitation Act clearly governs the case of a person jointly entitled to institute a suit. According to the section, if any one of such person is under the disability and none of the other persons could give a discharge without the concurrence of the person under disability, the time will run as against any of them, until the disability of the said person has ceased or any one of them becomes capable of giving a discharge. If the position is that any one of such persons is capable of giving a discharge, then time will run against them all.

Section: 8

Special exceptions

Nothing in section 6 or in section 7 applies to suits to enforce rights of prior purchase, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations:

- (a)** A to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accrue. A, has under the ordinary law, only one year remaining within which to sue. But under Section 6 and 8 an extension of two years will be allowed to him, making in all a period of 3 years from the date of his attaining majority, within which he may bring his suit.

- (b) A right to sue for a hereditary office accrues to A who at the time is insane. Six years after the accrues A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given to him under Section 6 read with this section.
- (c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrue, his idiocy continuing up to the date of his death. A's representative in interest has, under ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

In ***Ponnamma v. Padmanabhan, AIR 1969 Ker 163***, section 7 is really an appendix to section 6. A harmonious construction of the two sections would require the view that in both sections the period of limitation is only extended. Section 7 is only an application of the principle in section 6 to a joint right inhering in a group of persons, some or all of whom are under the disability. It is the existence of a person in the group with a capacity to give a discharge without the concurrence of the others, which makes time run as against all in the group. The disability of the other persons in the group does not prevent the running of time and it is not the cessation of the disability of one in the group, but the attainment by him of the capacity to give a discharge without the concurrence of the others that makes time run as against all. This would show that even on the literal construction of section 7, time would run even if one or more persons in the group are under disability. That this the proper way to look at section 7 is made clear by section 8.

Section 6, 7 and 8 conclusion:

Generally limitation begins to run from the date of cause of action. But

the Act itself provides certain exceptions to this general principle. Thus, in a case where the aggrieved party is suffering from some disability, the period of limitation does not run from the date of the accrual of the cause of action but runs from a subsequent date, on which the disability ceases. In this connection Sections 6, 7 and 8 of the Act are the counterpart of each other and they unitedly form one unit.

JAMMU & KASHMIR REGISTRATION ACT

The Jammu and Kashmir Registration Act, was passed in 1920. Later, the Act was amended in 1977. It extended to the whole of the Jammu and Kashmir and came into force in 1978. The Act is now called as The Registration Act, 1977.

Object of the Registration Act:

Registration of a document is notice of all the facts stated in that document. The purpose of the Jammu and Kashmir Registration Act, 1977, as disclosed in its provisions, is to provide information to people, who may deal with property as to the nature and extent of rights which a person may have affecting that property. In other words it is to enable people to find out whether any particular piece of property, with which they may be concerned, has been made subject to some particular legal obligation. Further registration gives solemnity of form and legal importance to certain classes of documents by directing that they shall be registered.

Another purpose is to perpetuate documents which may afterwards be of legal importance; and the general purpose is to put on record and enquire what the particulars are and in case of land what obligations exist with regard to it. The provisions of the registration Act are very carefully designed to prevent forgeries, procurement of conveyances or mortgages by fraud or undue influence - ***K. Roy and Bros v. Ramanthdas, AIR 1945, Cal 37.*** It must also be noticed that, as observed by Supreme

Court in the case of ***Lachhman Dass v. Ram Lal and Another, 1989 (3) SVV 99***, that the real purpose of registration is to secure that every person dealing with property, where such document requires registration may rely with confidence upon statements contained in the registrar as a full and complete account of all transactions, by which title may be affected.

Section 2

Definitions: In this Act, unless there is anything repugnant in the subject or context-

(1) "address" means the place of residence, and the profession, trade, of a person described, and, in the case of a permanent resident of the state, his father's name, or where he is usually described as the son of his mother, then his mother's name and in case of married women, her husband's name;

(2) "book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book and the information storage devices like floppy disc, hard disc or compact or any other device;

(3) "district" and "sub-district" respectively means a district and sub-district formed under this Act;

(4) omitted

(5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act;

(6) "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;

(7) "lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease;

(8) "minor" means a person who, according to the personal law to which he is subject, has not attained majority;

(9) "movable property" includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immovable property; and

(10) "representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

PART II: OF THE REGISTRATION-ESTABLISHMENT

Section 3

Inspector-General of Registration:

(1) The Government shall appoint an officer to be the Inspector-General of Registration for the Jammu and Kashmir State:

Provided that the Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the Government appoints in this behalf.

(2) The Government may hold simultaneously any other office under the Government.

(3) The Government may also, appoint Additional Inspector General of Registration, Joint Inspector General of Registration and Deputy Inspector General of Registration, and may prescribe the duties of such officers:

Provided that every such officer shall be subordinate to the Inspector General of Registration.

Comment:

The hierarchy of the registration establishment in the state is as follows:

- i. Inspector General of Registration at the apex level;
- ii. Additional Inspector General of Registration;
- iii. Joint Inspector General of Registration;
- iv. District Registrar;
- v. Sub-Registrar.

Section 5

Districts and sub-districts:

(1) For the purposes of this Act, the Government shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such district and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the Official Gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

Section 6

Registrars and Sub-Registrars:

The Government may appoint such public officers or not, as it thinks proper, to be District Registrars and may appoint Sub-Registrars according to the sanctioned cadre and may also invest such public officers as the Government think proper with powers of a sub-registrar for several sub districts.

Comments:

The hierarchy of the registration establishment in the districts is as follows:

- i. District Registrar;
- ii. Sub-Registrars.

Section 7

Offices of Registrar and Sub-Registrar:

(1) The Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.

(2) The Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorise any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate:

Provided that no such authorisation shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

PART III: OF REGISTRABLE DOCUMENTS

Section 17

Documents of which registration is compulsory: Section 17 of the Indian Registration Act 1908, deals with the documents that are compulsory to be registered.

- (1)** The following documents shall be registered, namely:
 - (a)** instruments of gift of immovable property;

The word gift is not defined in the Registration Act but in common parlance it is understood in much the same sense as it is defined in section 122 of the Transfer of Property Act, Which reads: "*Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called donor, to another called the donee and accepted by or on behalf of donee*".

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance the gift is void.

Section 123 of the Transfer of Property Act requires that the transfer of immovable property by way of gift must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. Thus, a document by which rights in immovable property are surrendered without any consideration is in effect a deed of gift which under section 17 (a) requires registration – **Hira Singh v. Punjab Singh, 1925 Lah 183**. Section 17 (1) (a) is not attracted when the deed of gift relates to immovable property, but all instruments of gift of immovable property must be registered whatever be the value of property – **Proto Kolitah v. Mottea Kolitah**. An unregistered gift deed, therefore, cannot be used to create a title to immovable property – **Rup Narain Panday v. Sheo Dagar Tewari, 1939**.

An instrument of gift which effect an immediate transfer of ownership falls under this clause though the instrument provides that whatever called upon by the donee, the donor would execute a registered gift deed – **S. Chinna Buddha Sahib v. Raja Subamma, 1954**.

Muslim Gifts Not Compulsory Registrable:

All instruments of gift except those executed by a Muslim are compulsorily registrable under the Act. The Apex Court in **Hafeeza Bibi v. Shaikh Fareed, 2011**, held that the position is well settled, which has been

stated and restated time and again, that the three essentials of a gift under Mohammadan Law are: 1. declaration of the gift by the donor; 2. acceptance of the gift by the donee and 3. delivery of possession. Though, the rules of Mohammadan Law do not make writing essential to the validity of a gift; an oral gift fulfilling all the essentials make the gift complete and irrevocable. However, the donor may record the transaction of gift in writing. Asaf A. A. Fyze in *Outlines of Mohammadan Law*, states in this regard that writing may be of two kinds: (i) it may merely recite the fact of a prior gift; such a writing need not be registered. (ii) it may itself be the instrument of gift; such a writing in certain circumstances requires registration. He further says that if there is a declaration, acceptance and delivery of possession coupled with the formal instrument of a gift, it must be registered. Conversely, the author says that registration, however, by itself without the other necessary conditions, is not sufficient.

Thereupon the Division Bench of the Court observed:

"In our opinion, merely because the gift is reduced to writing by Mohammedan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial if all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rules of gift in Mohammadan Law".

The Apex Court further observed:

"We find ourselves in express agreement with the statement of law from Mulla; Principle of Mohammadan Law, page 120...(i.e.).....it is not the requirement that in all cases where the gift made is contemporaneous to the making of the gift then such deed must be registered under section 17 of the Registration Act. Each case would depend on its own facts".

In this case the Supreme Court approved the views of Calcutta High Court in Nasib Ali case and the Gauhati High Court in Md. Hesabuddin case. The Court further observed that the judgments delivered by Andhra Pradesh High Court, Jammu and Kashmir High Court and Madras High Court do not lay down the correct law - ***Hafeeza Bibi v. Shaikh Fareed, 2011.***

Exemption of Muslim Gifts from registration and the Doctrine of Constructive Notice:

Registration of a document is notice of all the facts stated in that document. The purpose of the Jammu and Kashmir Registration Act, 1977, as disclosed in its provision is to provide information to people, who may deal with property as to the nature and extent of rights which a person may have affecting that property. In other words it is to enable people to find out whether any particular piece of property, with which they may be concerned, has been made subject to some particular legal obligation. Further registration gives solemnity of form and legal importance to classes of documents by direction that they shall be registered.

Another purpose is to perpetuate documents which may after words be of legal importance; and the general purpose is to put on record and enquire what the particulars are and in case of land what obligations exist with regard to it. The provisions of the Registration Act are very carefully designed to prevent forgeries, procurement of conveyances or mortgages

by fraud or undue influence – ***K. Roy and Bros v. Ramanthdas, AIR 1945 Cal 37.***

In Brahma Nath v. Chandra Kali, AIR 1961 Pat 79, Patna High Court observed:

The real purpose of registration is to secure that every person dealing with property, where such dealings require registration may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which his title may be affected unless indeed he has actual notice of some unregistered transaction which may be valid apart from registration.

Given this context, the relevant question is whether the exemption of Muslim Gifts operates against the Spirit of the Registration Act or does it make the doctrine of constructive notice ineffective vis-à-vis Muslim gifts of immovable property? The answer of course will be in negative. Under the Muslim Law requirement of delivery of possession to complete a gift reinforces the doctrine of constructive notice. Muslim Law of gift attaches great importance to possession or seisin of the property gifted (Kabz-ul-Kamil) especially of immovable property – *Kathessa Umma v. Narayanath, AIR 1964 SC 275.* The Hedaya says that Seisin in case of gift is expressly ordained and Baille quoting from the inayah refers to the Hadis of Prophet declaring that “a gift is not valid unless possessed”. Explanatin II appended to Para 8 of Section 3 of the Transfer of property Act reads as:

Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

It follows that the actual possession operates as a constructive notice of the title. Therefore, the requirement as actual delivery of possession of

the subject matter of the gift operates as constructive notice even without the registration.

- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property;

Comment:

The conditions necessary for the application of section 17 (1) (b) are:

- a. The instrument in question must be non-testamentary pertaining to immovable property;
- b. It must not be instrument of gift of immovable property;
- c. It must purport or operate to –
 - i. create, declare, assign, limit or extinguish, whether in present or in future;
 - ii. any right, title or interest, whether vested or contingent;
 - iii. to or in immovable property; and
 - iv. the property is situated in a district where the Act is in force.

Meaning of non-testamentary document was given in ***Umrao Singh v. Lachman Singh***, it means a document which is plainly intended to be operative immediately and to be final and irrevocable is a non-testamentary document.

Scope of following words:

Create: Every non-testamentary instrument which means to or has the effect originating some right, title or interest in immovable property will be governed by the words 'create' – ***Ghulam Ahmad v. Ghulam Qadir***.

Declare: In section 17, the word declare is placed along with 'create', 'limit' or 'extinguish' a 'right', 'title' or 'interest' and these words imply a definite change of legal relation to the property by an expression of will embodied in the document referred to. Therefore the word 'declare' implies a declaration of will, not a mere statement of a fact - **Ghulam Ahmad v. Ghulam Qadir.**

Assign: The term 'assign' means to convey; to transfer rights or property. Therefore, a document by which the mortgagor assigned all his rights and interest in the immovable property subject to the mortgage debt and interest thereon must necessarily be registered - **Barsik Nandi v. Gurdas Pal.**

Limit:

Limit connotes restriction on some right or interest in immovable property, for instance, an agreement with the creditors not to alienate any of the property till the debts were paid of, limits rights in immovable property - **Lalji Das v. Chet Ram.**

- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

Comment:

To attract the applicability of the above provision it has to be shown that the document in dispute is a non-testamentary instrument acknowledging receipt of a consideration on account of creation, declaration, assignment, limitation or extinction of any right, title or interest - **Ghulam Mohammad v. Shri Subhan.** In other words, to attract this clause following two conditions must be satisfied:

- i. Document must be the receipt of consideration; and
- ii. Document, must, prima facie, be an acknowledgement of payment of some consideration on account of the creation, declaration, assignment, limitation or extinction of a right, title or interest.

(d) any partnership deed;

Comment:

Section 17 of the J&K Registration Act contemplates compulsory registration of any partnership deed. However, all that the Registration Act contemplates is the registration of a deed of partnership and not the registration of partnership as such under the Registration Act. Non registration of a partnership under the Registration Act would not, thus, affect the partnership, its affairs and the rights and liabilities, which it or its partners have under the J&K State Partnership Act, 1996. In ***Hemkund Transport Service v. Union of India and Others, 2008***, J.P. Singh, J. observed:

Although section 17 prescribes the compulsory registration of any partnership deed, section 49 does not contemplate any affect of its non-registration. Non- registration of compulsory registerable documents under section 17, entails the consequences, which are mentioned at clauses (a) (b) & (c) of section 49. This section is completely silent as to the effect of non-registration of partnership deed. Expressions 'such property' and 'conferring such power' appearing in section 49 (c), refer only to the property i.e. immovable property and power i.e. power to adopt as mentioned in section 49 (a) & (b) of the Registration Act. It, therefore, follows that the rigour of section 17 in requiring compulsory registration of a partnership deed has been diluted with the omission of partnership deed from the purview of section 49 of the Registration Act.

(e) any adoption deed;

Comment:

Under (Central) Registration Act of 1908 adoption deed is not required to be compulsorily registered; because it is not the adoption deed by which the rights of the adopted son are created but the adoption itself and any wording in the adoption deed cannot either create or limit any rights which the adopted son gets by his adoption. However, under J&K Registration Act 'any adoption deed' requires compulsory registration – ***Vishvanath Ramji Karale v. Rahibai Ramji Karale.***

- (f) any non-testamentary authority to adopt; and

Comment:

Under (Central) Registration Act of 1908 'authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will' is compulsorily registrable. However, under J&K Registration Act 'any non-testamentary authority to adopt' is required to be registered compulsorily. The difference between the two is that the later is gender neutral, former is gender specific.

- (g) leases of immovable property for any term exceeding one year, or reserving a yearly rent exceeding fifty rupees;

Provided that the Government may, by order published in the Jammu and Kashmir Government Gazette, exempt from the operation of this subsection any such leases executed in any district, or part of a district.

Comment:

In order to attract the section 17 (1) (g), a lease must be-

- (a) of immovable property;
- (b) for term exceeding one year, and
- (c) must reserve a yearly rent of more than Rs. 50.

Unless the deed itself mentions the rent to be paid yearly, it cannot be said that the lease reserves yearly rent and as such the deed is not compulsory registrable – ***Dharamarth Department v. L. Basant Lal.*** However, a lease for two years does not cease to be a lease for a term exceeding one year merely because it provides that the tenant could be evicted the term if he committed a breach of terms and is therefore, compulsorily registrable under clause (g) of section 17 of the J&K Registration Act – ***Ishwar Dutt v. Sunder Singh.***

- (h) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property;

Comment:

In order to attract the section 17 (1) (h), following conditions are necessary;

- (a) there must be a non-testamentary instrument relating to immovable property;
- (b) it must either transfer or assign;
 - i. ant decree or order of a court or
 - ii. any award.
- (c) such decree or order or award must purport or operate;
 - i. to create, decree, assign, limit or extinguish, (whether in present or in future);
 - ii. any right, title or interest (whether vested or contingent) in such property.

In ***Krishan Lal v. S. Pal Singh, AIR 1968***, S obtained a compromise decree for ejectment from a house against R. S sold the property in dispute to P by means of a sale deed and also by means of an agreement transferred the decree obtained against R to P. On the basis of the sale deed and the agreement P sought to eject R from the suit property, however, R took an objection that the transfer or assignment of decree being unregistered was not receivable in evidence. It was held that document or agreement is covered under Section 17 (1) (h) and is inadmissible on account of being unregistered.

- (i) any document which purports or operates to effect any contract for sale of any immovable property.

Comment:

Earlier contract for sale of immovable property was not required to be registered, however, by the Amendment Act of 2011, "any document which purports or operates to effect any contract for sale of any immovable property" is now compulsorily registrable.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

- (i) any composition deed; or
- (ii) any instrument relating to shares in a joint Stock Company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its

immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document other than the documents specified in clause (i) of subsection 1 not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding;] or

(vii) any grant of immovable property by government; or

(viii) any instrument of partition made by a revenue officer; or

(ix) any instrument relating to loan granted under authority of cabinet order No 1547-C of 1953 dated 15th December, 1953;

(x) any order granting a loan under the Jammu and Kashmir Government Aid to Agriculturist and Land Improvement Act, 1871, or the Land Improvement Act, 1893; or instrument for securing the repayment of a loan made under that Act; or

(x-a) any instrument relating to loan granted to displaced persons for construction of houses or for petty trade;

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt

for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any instrument which purports or operates to transfer land in favour of state or a Panchayat constituted under the Jammu and Kashmir Village Panchayat Act, 2008.

Section 18

Documents of which registration is optional:

Any of the following documents may be registered under this Act, namely:

(a) leases of immovable property from year to year or for any term below one year, and receiving a yearly rent of rupees fifty or less and leases exempted under section 17;

(b) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(c) wills; and

(d) all other documents not required by section 17 to be registered.

Comments:

The registration of following documents are optional:

(a) leases not covered under section 17 (1)(g);

(b) instruments affecting change in legal relation in movable property;

(c) wills because they are recoverable by subsequent declaration of the testator.

In other words, all the documents which does not fall under section 17(1) are not compulsorily registered.

Section 18-A

Document for registration to be accompanied by true copy thereof:

Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document presented to him for registration unless such document is accompanied by a true copy thereof.

PART VII: OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES

Section 36

Procedure where appearance of executant or witness is desired:

If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or court as the Government directs in this behalf to issue a summons requiring him to appear at the registration office, either in person or by duly authorised agent, as in the summons may be mentioned, and at a time named therein.

Section 37

Officer or court to issue and cause service of summons:

The officer or court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Section 38

Persons exempt from appearance at registration office:

(1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration office, or

(b) a person in jail under civil or criminal process, or

(c) persons exempt by law from personal appearance in court, and who would but for the provisions next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registration-officer shall either himself go to the house of such person, or to the hall in which he is confined, and examine him or issue a commission for his examination.

Section 39

Law as to summonses, commissions and witnesses:

The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses and for their remuneration in suits before civil courts, shall, save as aforesaid and mutatis mutandis, apply to any summons or commission issued and any person summoned to appear under the provisions of this Act.

PART X: OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION

Section 47

Time from which registered document operates:

A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Comment:

In view of the provisions of section 47 of the Registration Act, it is well settled that a document on subsequent registration will take effect from the time when it was executed and not from the time of its registration. Where two documents are executed on the same day, the time of their execution would determine the priority irrespective of the time of their registration. The one which is executed earlier in time will prevail over the other executed subsequently.

Section 48

Registered documents relating to property when to take effect against oral agreements:

All non-testamentary documents duly registered under this Act, and relating to any property, whether movable or immovable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession and the same constitutes a valid transfer under any law for the time being in force.

Section 49

Effect of non-registration of documents required to be registered:

No document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall-

- (a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Comment:

Section 49 of the Act provides the sanction behind section 17 of the Act and for those provisions of the Transfer of Property Act which require registration of document, by depriving them of their effectiveness and prohibiting their admissibility in evidence of any transaction affecting immovable property or a power to adopt or affect any such power to adopt. It is noteworthy that section 17 (1) (d) makes partnership deed simpliciter compulsory registrable but consequential effect of non-registration has not been provided under section 49 of the Act. It was on this basis J&K High Court in ***Hemkund Transport Service v. Union of India and Others, 2008 (1) CTLJ 115***, held that an unregistered partnership deed is still admissible in evidence. However, in ***Nazir Ahmad v. G. Rasool AIR 1971 J&K 24***, Division Bench of J&K High Court held that an unregistered partnership deed is inadmissible in evidence if it does in any way affect immovable property

Section 50

Certain registered documents relating to land to take effect against unregistered documents:

Every document falling under any exemption mentioned in section 17, or clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

PART XI: OF THE DUTIES AND POWERS OF REGISTERING OFFICERS

Section 68

Powers of Registrar to superintend and control Sub-Registrars:

(1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered.

Section 69:

Power of Inspector-General to superintend registration offices and make rules:

(1) The Inspector-General shall exercise a general superintendence over all the registration-offices in the territories under the State Government, and shall have power from time to time to make rules consistent with this Act-

(a) providing for the safe custody of books, papers and documents;

(aa) providing the manner in which and the safeguards subject to which the books may be kept in computer floppies or diskettes or in any other electronic form under sub-section (1) of section 16 A;

(b) omitted;

(c) omitted;

(d) regulating the amount of fines imposed under sections 25 and 34, respectively;

(e) regulating the exercise of the discretion reposed in the registering officer by section 63;

(f) regulating the form in which registering officers are to make memoranda of documents;

(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under sections 51;

(gg) regulating the manner in which the instruments referred to in sub-section (2) of section 88 may be presented for registration;

(ggg) regulating the manner of copying of books, indexes or portions thereof;

(h) declaring the particulars to be contained in Index Nos. I, II, III and IV, respectively;

(i) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(2) The rules so made shall be submitted to the State Government for approval, and, after they have been approved, they shall be published in the Official Gazette, and on publication shall have effect as if enacted in this Act.

Section 70

Power of Inspector-General to remit fines:

The Inspector-General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee.